

### REMARKS

This amendment is being filed with an RCE in lieu of an appeal brief.

Claims 1, 4, 6-9, 12, 14-20 and 22-24 are canceled. Applicants reserve the right to pursue any of the canceled subject matter in one or more continuing applications.

Claims 2, 3, 5, 10, 11 and 21 have been amended and new claims 25-28 have been added. The amended and new claims are supported throughout the application, e.g., at page 7, lines 11-19, and in the sequence listing.

#### Claim objections

Claim 2 has been rewritten in independent form, thereby obviating the objection.

#### Rejections Under 35 U.S.C. §112

The claims remain rejected for lack of written description. This rejection is traversed.

The Examiner's arguments are focused on the alleged deficiencies of claims reciting percent identity language. Claim 1 (the only claim that recited percent identity language) has been canceled without prejudice.

The Examiner states: "the present claims do not encompass hybridization language for identifying structurally related polynucleotides, rather only a percent identity." This is incorrect. The Examiner appears not to have read all the claims or noticed that claim 3 does indeed recite hybridization limitations that have written description under the standard of the Office's own Written Description Guidelines (see Example 9 of the Synopsis of Application of the Guidelines) and under Federal Circuit law (see *Enzo Biochem, Inc. v. Gen-Probe Inc.* (296 F.3d 1316, Fed. Cir. 2002). Furthermore, claims 5, 21 (as well as new claims 25-28) are limited by a specific sequence identifier, for which written description is clearly present. (The hybridization language in claim 5 was removed given that it was superfluous given the express limitation to one particular SEQ ID NO.)

In light of the foregoing, Applicants submit that the claims satisfy 35 U.S.C. §112 and respectfully request that the rejection be withdrawn.

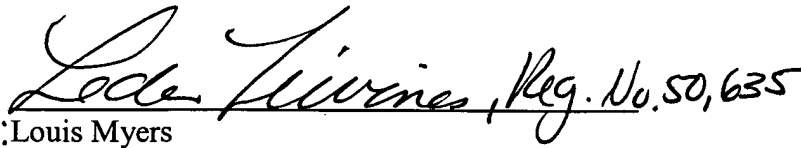
Applicant : Katia Georgopoulos et al.  
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Attorney's Docket No.: 10284-095001 / MGH 1286.0

Enclosed is a Petition for Extension of Time along with the required fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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